

Mr. Chairman and Members of the Committee:

Thank you very much for the opportunity to present testimony today regarding agricultural guestworker programs. I apologize for the late submission of my written testimony; it was not confirmed until late yesterday that I would be testifying.

As a child of farmworkers, and throughout my career as an attorney, as a former Administrator of the Department of Labor's Wage and Hour Division, as Deputy Chief of Staff to the President, and presently as an advisor to Arturo Rodriguez, President of the United Farm Workers of America, the conditions for migrant and seasonal farmworkers have remained a central concern to me. Our government's policies have not always served farmworkers well. I appreciate the opportunity to help farmworkers voice their concerns as you consider immigration policy in the agricultural sector.

I strongly encourage the Committee's members to support H.R. 3142, the Agricultural Jobs, Opportunity, Benefits, and Security Act of 2003, known as "AgJOBS." It is a fair, reasonable, bipartisan compromise that benefits farmworkers, agricultural employers, consumers, and the nation as a whole.

The AgJOBS compromise was forged after years of intense conflict. Beginning in 1995, members of Congress repeatedly introduced proposals to create a new agricultural guestworker program or substantially relax and revise the H-2A temporary foreign agricultural worker program. Many parties vigorously opposed these proposals, including the U.S. Catholic Conference of Bishops, because they were viewed as one-sided, unfair to farmworkers, inadequate responses to the real needs of the agricultural industry and the nation, and inconsistent with our nation's traditions of democratic and economic freedom. Given the polarized nature of those debates, it is amazing that a

compromise was ever reached. The compromise, reflected in AgJOBS, required intense negotiations during several years over every section, and, indeed, over almost every word of the bill. The existence of a compromise is a tribute to the tenacity, negotiating skills and, ultimately, the reasonableness of the principal House negotiators, Rep. Chris Cannon and Rep. Howard Berman, as well as their counterparts in the Senate, Senator Larry Craig and Senator Edward Kennedy.

Make no mistake about this compromise. It is painful. There are aspects of the AgJOBS bill that many farmworker advocates find very troubling. We have been told that many agricultural employers feel the same way. At a certain point, however, it becomes obvious that neither side can get all it wants and that compromise is necessary because the status quo was and is untenable. We have reached that point.

There should be no further delay in approving the AgJOBS legislation. During the past eight years, several Congressional committees have held hearings and markups on legislation that addressed these issues. Agencies have made recommendations. Academics have written articles. Private parties have spent considerable resources seeking to achieve their aims. The battle was hard fought. But it is time to bring this issue to a resolution and spend our scarce resources on progress.

There are no alternatives that can become law; they have been considered and rejected during eight years of conflict. No other immigration proposal regarding agricultural workers and employers is going to pass the House or the Senate. No other proposal would win anywhere close to the support this bill has garnered. In the Senate, there are now 50 Senators, half Democrats, half Republicans, joining Sen. Craig in cosponsoring the AgJOBS bill, S.1645. We know that when a vote occurs, even more

Senators will support the bill. In the House, the eighty cosponsors at present also are split between Republicans and Democrats.

Congress must act now because to allow the status quo to continue would be unconscionable. Our Government must respond to the fact that more than one-half of America's farmworkers – the people harvesting our fruits and vegetables – lack authorized immigration status. They are here. They are working. They are doing a job that is ranked among the three most dangerous in the country. Farmworkers' wage rates are the lowest of any workers in the United States. We need them. And they are not leaving. It is in our national security interest to know who is in the United States. Employers want to know that their employees possess lawful immigration status. Farmworkers want to come out of the shadows so that they will no longer have to endure the many abuses that are present when workers lack legal status. The opportunity to earn immigration status will draw out undocumented farmworkers. You can transform the farm labor market from one where employers and workers are violating the nation's laws to an industry operating under the rule of law.

AgJOBS is a sensible policy response to the present situation. Let me briefly summarize it. There are two parts. The first part offers the opportunity for a limited set of farmworkers to earn an adjustment of status to that of "temporary resident" and then "permanent resident." To become part of the program, a worker must demonstrate that he or she performed at least one hundred days of agricultural work during any 12 consecutive months between March 1, 2002 and August 31, 2003. The application period would begin in the middle of 2004 and last 18 months. To reduce fraud, applications would have to be filed through an organization approved by the Department of Homeland

Security (called a “qualified designated entity” or QDE) or a licensed attorney. QDEs could be a farm labor organization, employer association or organization with substantial immigration experience. Once the farm worker proves to the Department of Homeland Security that he or she performed the work and otherwise meets the standards of U.S. immigration laws, he or she would be granted a temporary resident immigration status. Let us be clear—this is not amnesty. To become a permanent resident immigrant, the worker would have to work in agriculture for at least 360 days in the six-year period beginning September 1, 2003; most of the work would need to occur during the first three years. Once the worker completes this work requirement and has otherwise complied with immigration laws, he or she will receive permanent immigration status, as will his or spouse and minor children. This legalization program will encourage undocumented workers to report their presence to the Government and transform the farm labor force into a legal one.

The second part of AgJOBS would revise the existing agricultural guestworker program, called the H-2A program. I must emphasize that the extremely difficult negotiations over the changes in the H-2A program could only be resolved by including the earned adjustment program. The H-2A Program, which began during World War II at the same time as the notorious “Bracero” program, remains controversial. It subjects participating workers to a temporary, non-immigrant status that has been accompanied by many abuses that are less prevalent among workers who hold a true immigration status or citizenship. The major changes in the H-2A program would be as follows:

(1) The principal wage protection, called the “adverse effect wage rate,” would be frozen at the 2002 wage rates for the three years while the General Accounting Office and a special commission studies H-2A wages and makes recommendations to Congress. In the meantime, H-2A employers would still need to pay the local “prevailing wage” or the minimum wage, whichever is higher. (2). The H-2A application process for employers would be streamlined from a “labor certification” to a “labor attestation” process. (3) H-2A guestworkers would for the first time have the right under federal law to enforce their contract rights in federal court. This compromise contains a delicate balance between the strongly-held positions of many agricultural employers and farmworker organizations.

None of the other pending immigration proposals responsibly answer the legitimate needs of agricultural employers, agricultural workers, consumers and the nation. With due respect, Rep. Goodlatte’s proposal, H.R. 3604, Temporary Agricultural Labor Reform Act of 2003, would make it easier for agricultural employers to hire guestworkers, rather than U.S. workers, lower wage rates paid to both the guestworkers and U.S. workers, and reduce government oversight over the program. It offers no chance for undocumented workers to become immigrants, offers no incentive for them to come out of the shadows, and therefore just adds a new group of vulnerable guestworkers to the farm labor force. The guestworkers would have even less protection than they have now. The proposal guarantees a repeat of the notorious Bracero program.

President Bush’s proposal announced on January 7, while a welcome addition to this important debate, also has flaws. He proposes to grant current undocumented persons in the United States temporary work permits but provides no incentives for

millions of workers to register for the program. The proposal makes vague promises of permanent residency through existing programs but proposes to neither increase substantially the number of available visas nor reform the bureaucratic obstacles which cause so much delay. Without a real path to permanent residency, millions of currently undocumented workers will have no incentive to register for the Administration's program and will be driven further underground creating even more of a black market in labor. Moreover, and more importantly, for legal American workers, no measures have been specified to ensure that the wages and benefits of US workers will not be depressed by employers' reliance on "guest workers." Without adequate labor protections for US workers and the foreign workers, the United States will create a class of service workers with low wages and fewer rights, largely Latino—second class status for millions of people. Employers would become dependent on this workforce much like agriculture has already done, to the detriment of US workers. This is not speculative--Germany and Saudi Arabia are but two countries with years of experience with programs such as that proposed by President Bush and that experience is not one we should want for our country.

And our own experience with the massive Bracero program of the 1940's and 1960's should also serve as a lesson. My father was a Bracero for almost six years—his experiences are but one of many stories that can be told. When the employer changed the terms of the contract from 50 cents to 25 cents an hour, they had no ability to complain. The Mexican government, when contacted by the workers, told them to bad—they were lucky to have a job. He told us of the company store where workers had to shop with prices so high that there was very little money to send back home to his mother and his

family. My father was able to become a permanent resident, and look for better paying work as his family grew because he was now part of America—not some second class worker. He was able, through his hard work, to make the American Dream a reality for his children.

As you consider the question of foreign worker programs and the need to respond to real labor market needs, consider carefully whether you are prepared to reverse the American tradition of welcoming immigrants as part of our society. As an American I worry that proposals without a real path to permanence and without real labor protections would hugely exacerbate the divisions that exist in our country today.

Immigration has made this nation great. Immigration policy is a complex matter that raises many emotions. AgJOBS is a carefully drafted, reasonable approach that remains true to our history. We hope that you will help us move the AgJOBS bill to passage by March 31, the birth date of Cesar Chavez. Thank you for this opportunity.